

MAR 10 2004

Before the  
**Federal Communications Commission** FEDERAL COMMUNICATIONS COMMISSION  
 Washington, DC 20554 OFFICE OF THE SECRETARY

In the Matter of	)	MB Docket No. 03-35
	)	RM-10646
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	
FM Broadcast Stations.	)	
(Florence, Quinby and Greeleyville,	)	
South Carolina <sup>1</sup>	)	

To: Assistant Chief, Audio Division

**JOINT REQUEST**  
**FOR APPROVAL OF SETTLEMENT AGREEMENT**

Miller Communications, Inc. ("Miller") and Bulldog Broadcasting ("Bulldog"), by their attorneys and pursuant to Sections 1.420(j) of the Commission's Rules, hereby file this Joint Request for Approval of the attached Settlement Agreement. In support whereof, the following is shown:

If approved, this Joint Request would settle in part the rule making proceeding that was initiated by *Notice of Proposed Rule Making*, DA 03-369, released February 7, 2003 ("NPRM"). That NPRM, issued at the request of SSR Communications Incorporated ("SSR") proposes the allotment of Channel 237A to Florence, South Carolina, as that community's second FM and sixth aural transmission service. Instead, Miller proposed to allot Channel 237A to Quinby, South Carolina, as its first local aural transmission service, and Bulldog proposed to allot Channel 238C3 to Greeleyville, South Carolina ("Greeleyville Proposal") as its first local service. Bulldog has agreed to dismiss the Greeleyville Proposal in exchange for reimbursement by Miller of Bulldog's

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<sup>1</sup> Quinby and Greeleyville have been added to the caption.

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expenses in preparing, filing, and prosecuting the Greeleyville Proposal. The documentation required by Section 1.420(j) of the Rules is provided in Schedule 1 to the Settlement Agreement.

#### **Station WIBZ, Wedgefield, SC**

Miller is licensee of Station WIBZ(FM), Channel 238A, at Wedgefield, South Carolina. The Greeleyville Proposal requests the substitution of Channel 240A at Wedgefield and the concurrent modification of WIBZ's authorization to operate on Channel 240A. On March 31, 2003, Miller filed a minor change application (File No. BPH-20030331AAI), for WIBZ which is mutually exclusive with the reference coordinates specified by SSR for Channel 237A at Florence. If the Greeleyville Proposal is dismissed and Miller's counterproposal is granted, WIBZ's application could also be granted and there would be no need for WIBZ to change channels.

#### **Station WWBD, Bamberg, SC**

Miller is also the licensee of Station WWBD(FM), Channel 239A, at Bamberg, South Carolina. On April 2, 2003, Miller filed an application (File No. BPH-20030402ADV) to upgrade WWBD to operate on Channel 239C3. The reference coordinates specified in that application were in conflict with new reference coordinates Bulldog requested in the Greeleyville Proposal for WXIV, Channel 238C1, Savannah, Georgia. As a result, Miller dismissed BPH-20030402ADV and on October 31, 2003, filed a replacement application for WWBD (File No. BPH-20031031ADP) to upgrade WWBD to Class C3 with different reference coordinates. That application was filed contingent with an application for Station WQZY, Channel 240C0 Dublin, Georgia, to

change its reference coordinates to clear WWBD, and a request to downgrade to Class C0 existing Class C-Station WXRC(FM), Channel 239C, Hickory, North Carolina.

Dismissal of the Greeleyville Proposal and restoration of the current reference coordinates or licensed coordinates of WIXV will permit WWBD greater flexibility in locating its transmitter site. It will also simplify this proceeding as the Commission will only have to choose between Miller's proposal for first local service to Quinby and SSR's proposal for second FM and sixth local aural service to Florence, South Carolina.

### **Requested Action**

Miller and Bulldog respectfully request the Commission to take the following actions:

(1) Dismiss the Greeleyville Proposal simultaneously with the Commission's issuance of a Report and Order in this Docket allotting Channel 237A to Quinby, South Carolina, and denying the SSR proposal for a second FM service to Florence; and

(2) Remove from the Commission's database the reference coordinates requested by Bulldog for WIXV, Savannah, Georgia; i.e., North Latitude 32° 06' 18", West Longitude 081 29' 17" and restore to the database as reference coordinates for WIXV North Latitude 32° 03' 30", West Longitude 081 20' 20" (WIXV's current reference coordinates), or North Latitude 32° 03' 29", West Longitude 081 20' 19" (WIXV's licensed coordinates.)

Wherefore, Miller and Bulldog respectfully request the Commission to dismiss the Greeleyville Proposal and grant Miller's proposal.

Respectfully submitted,

**MILLER COMMUNICATIONS, INC.**



By: \_\_\_\_\_  
Gary S. Smithwick  
Its Attorney

**Smithwick & Belendiuk, P.C.**  
5028 Wisconsin Ave., N.W.  
Suite 301  
Washington, DC 20016  
(202) 363-4050

**BULLDOG BROADCASTING**

By: \_\_\_\_\_  
Mark N. Lipp  
Its Attorney

**Vinson & Elkins, L.L.P.**  
The Willard Office Building  
1455 Pennsylvania Avenue, N.W.  
Washington, DC 20004-1008  
(202) 639-6500

March 10, 2004

Wherefore, Miller and Bulldog respectfully request the Commission to dismiss the Greeleyville Proposal and grant Miller's proposal.

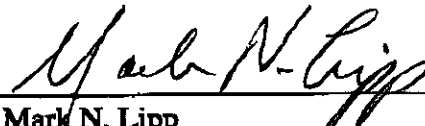
Respectfully submitted,

**MILLER COMMUNICATIONS, INC.**

By: \_\_\_\_\_  
Gary S. Smithwick  
Its Attorney

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5028 Wisconsin Ave., N.W.  
Suite 301  
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March 10, 2004

## **SETTLEMENT AGREEMENT**

This Settlement Agreement is made and entered into this 17th day of February, 2004, by and between Bulldog Broadcasting ("Bulldog") and Miller Communications, Inc. ("Miller"), with reference to the following:

A. Bulldog has pending before the Federal Communications Commission ("FCC") a counterproposal in MB Docket No. 03-35 (the "Greeleyville Proposal"), proposing, inter alia, to (1) allot FM Channel 238C3 to Greeleyville, South Carolina as its first local service; (2) change the operating channel of Station WIBZ(FM), Wedgefield, South Carolina ("WIBZ"), from Channel 238A to 240A; and change the allotment reference coordinates of Station WIXV, Channel 238C1, Savannah, Georgia, to North Latitude 32° 06' 18", West Longitude 081 29' 17" ("New WIXV Reference Coordinates") .

B. Miller is the licensee of WIBZ. Miller is also licensee of WWBD(FM), Bamberg, South Carolina ("WWBD"). There is an application pending (FCC File No. BPH-20031031ADP) to improve the facilities of WWBD which is short spaced to a component of the Greeleyville Proposal that seeks to change the reference coordinates of Station WXIV, Savannah, Georgia, to the New WIXV Reference Coordinates. Miller has other plans for WIBZ and WWBD which would be frustrated by the change in channel for WIBZ and New WIXV Reference Coordinates proposed by Bulldog. Miller is willing to pay Bulldog to remove the impediments caused by the Greeleyville Proposal.

C. The parties wish to settle their differences and cause the withdrawal of the Greeleyville Proposal from consideration by the FCC in compliance with Section 1.420(j) of the FCC's Rules.

NOW THEREFORE, in consideration of the foregoing and the mutual obligations and covenants set forth herein, the parties, intending to be legally bound hereby, agree as follows:

1. No later than the next business day after the date hereof, Bulldog shall file with the FCC a request for approval of the withdrawal of the Greeleyville Proposal substantially in the form attached hereto as Exhibit A. The request shall be accompanied by (a) a copy of this Settlement Agreement; (b) a certification signed by a principal of Bulldog substantially in the form attached hereto as Exhibit B; and (c) a certification signed by a principal of Miller substantially in the form attached hereto as Exhibit C.

2. Simultaneously with the execution hereof, Miller shall (a) execute the certification substantially in the form attached hereto as Exhibit C.

3. Miller shall pay to Bulldog the total amount set forth in Schedule 1 within 5 business days after the FCC's order or orders approving this settlement agreement shall have become a "Final Order" or "Final Orders," i.e., not subject to, or the subject of reconsideration or appeal or review by the Commission on its own motion.

4. Bulldog represents and warrants that the amounts set forth in Schedule 1 accurately set forth its expenses in preparing, filing, and prosecuting the Greeleyville Proposal.

5. Neither this agreement nor any right created hereunder shall be assignable by Bulldog or Miller unless the other party consents in writing. If any provision of this Agreement is determined to be void, unenforceable, or contrary to law, the remainder of this Agreement shall continue in full force and effect, provided that such continuation would not materially diminish the benefit of this Agreement for either party. This agreement sets forth the entire understanding of the parties hereto at the time of its execution and delivery with respect to the subject matter hereof and supersedes all prior agreements between the parties with respect to the subject matter hereof. This agreement may not be amended except by written amendment signed by both parties. Each of the undersigned represents and warrants that he has the requisite power and authority to bind his respective party to the terms and obligations hereof. This agreement may be signed in counterparts, with the same effect as if the signature on each counterpart were

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on the same instrument. This agreement shall be governed by and construed according to the laws of the State of South Carolina, without regard to its conflict-of-laws provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement as of the date first written above.

**BULLDOG BROADCASTING**

By: \_\_\_\_\_

Mike Hubbard  
Principal

**MILLER COMMUNICATIONS, INC.**

By: \_\_\_\_\_

Harold Miller  
President



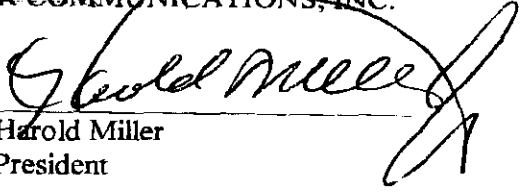
on the same instrument. This agreement shall be governed by and construed according to the laws of the State of South Carolina, without regard to its conflict-of-laws provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Settlement Agreement as of the date first written above.

**BULLDOG BROADCASTING**

By: \_\_\_\_\_  
Mike Hubbard  
Principal

**MILLER COMMUNICATIONS, INC.**

By:  \_\_\_\_\_  
Harold Miller  
President

**Schedule 1**

**Reimbursable Expenses**

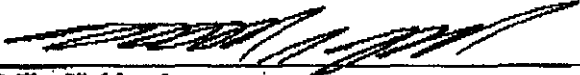
Legal Fees (Vinson & Elkins)	4732.80
Engineering Fees	3176.44
<b>Total</b>	<b>7909.24</b>

**CERTIFICATION OF MIKE HUBBARD**

I, Mike Hubbard, state as follows:

1. I am a principal of Bulldog Broadcasting ("Bulldog"). On March 31, 2003, Bulldog filed a counterproposal in MB Docket No. 03-35 seeking to allot a new FM Channel 238C3 to Greeleyville, South Carolina.
2. Bulldog has reached agreement with Miller Communications, Inc. regarding the withdrawal of the foregoing counterproposal.
3. Neither Bulldog nor any of its principals, agents, or representatives have received any money or other compensation in excess of Bulldog's legitimate and prudent expenses in exchange for the withdrawal of Bulldog's counterproposal and its expression of interest in a new allotment at Greeleyville, South Carolina.

I certify under penalty of perjury that the foregoing is true and correct. Executed on this  
17<sup>th</sup> day of ~~December, 2003~~ 2004  
February

  
Mike Hubbard

**EXHIBIT C**

**CERTIFICATION OF HAROLD T. MILLER, JR.**

I, Harold T. Miller, Jr., state as follows:

1. I am president of Miller Communications, Inc. ("Miller"). On March 31, 2003, Miller filed a counterproposal in MB Docket No. 03-35 seeking to allot a new FM Channel 237A to Quinby, South Carolina.
2. Miller has reached agreement with Bulldog Broadcasting regarding the withdrawal of a counterproposal filed by Bulldog in MB Docket No. 03-35 proposing to allot a new FM Channel 238C3 to Greeleyville, South Carolina.
3. Neither Miller nor any of its principals, agents, or representatives have paid, or agreed to pay, any money or other compensation in excess of Bulldog's legitimate and prudent expenses in exchange for the withdrawal of Bulldog's counterproposal and its expression of interest in a new allotment at Greeleyville, South Carolina.

I certify under penalty of perjury that the foregoing is true and correct. Executed on this 6TH day of March 2004.

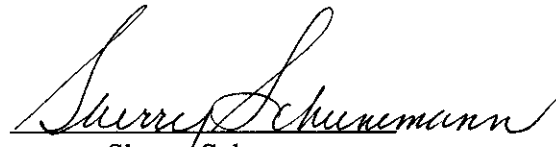
  
Harold T. Miller, Jr.

## CERTIFICATE OF SERVICE

I, Sherry Schunemann, a secretary in the law offices of Smithwick & Belendiuk, P.C., hereby certify that on March 10, 2004, copies of the foregoing Joint Request for Approval of Settlement Agreement were sent via First Class Mail, postage pre-paid to the following:

Ms. Rolanda F. Smith\*  
Media Bureau  
Federal Communications Commission  
The Portals II  
445 Twelfth Street, S.W.  
Room 3-A247  
Washington, DC 20554

SSR Communications Incorporated  
5270 West Jones Bridge Road  
Norcross, GA 30092-1628



Sherry Schunemann

\*By Hand